

MILITARY POLICE MUTUAL AID AND THE POSSE COMITATUS ACT

BY

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MILITARY POLICE MUTUAL AID AND THE POSSE COMITATUS ACT

by

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ABSTRACT

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The Posse Comitatus Act was enacted in 1878 to prevent local sheriffs and U.S. Marshals from drafting military members into service as a posse, or by serving in other law enforcement functions, thereby taking them away from their military duties. Since 1878 there have been numerous exceptions to the Act granted for various reasons. Another exception explored here is the perils and benefits of allowing Military Police to respond to requests of Mutual Aid in law enforcement matters. Mutual Aid is a cornerstone of public safety where neighboring towns and villages band together to deal with a catastrophe. The National Response Framework established under Presidential National Security Directive 5 calls for leveraging assets at the local level. Military Police are currently prohibited from responding outside of federal property in the capacity of law enforcement personnel in response to requests for mutual aid. Military Police are trained, certified, and capable of responding, but are prohibited by the PCA.

MILITARY POLICE MUTUAL AID AND THE POSSE COMITATUS ACT

Recent interest in this topic started with the news report in March, 2009, of Fort Rucker, Alabama, Military Police (MP) being accused of violating the Posse Comitatus Act of 1878. The article published in October, 2009, by the Dothan Eagle, was a report on the conclusion of an investigation by the U.S. Army Inspector General.¹

In August, 2009, the U.S. Army Inspector General completed an investigation from a Fort Rucker, Alabama incident involving a possible violation of the Posse Comitatus Act (PCA). The results of that investigation concluded there was a violation of the PCA.

The first test was whether the actions of military personnel (MPs) were active or passive ... By directing and diverting traffic and people, and by their uniformed and armed presence in the streets at TCPs, the MPs actively participated in law enforcement activities.²

This incident presents a distinct case for research as to whether military law enforcement personnel (U.S. Army and U.S. Marine Corps Military Police, U.S. Navy Master at Arms, and U.S. Air Force Security Force Police) should be classified the same as “all” members of the Army and Air Force in relation to the PCA. While there are numerous historical vignettes of “regular” military forces used to conduct civilian law enforcement duties,³ there are relatively few incidences where military police forces were used to conduct civilian law enforcement.⁴ This research will explore these incidences to determine what, if any, benefits or perils there are associated with using military police forces to assist civilian law enforcement in cases of mutual aid.

The History of the PCA section will include a review of the law associated with the PCA,⁵ what other scholars have written about the PCA⁶ (noting that there are conflicting opinions about the reasons for the establishment of the PCA),⁷ and a review

of case law arising from use of military forces to conduct civilian law enforcement.⁸ The analysis section will include various points of study regarding the history of mutual aid,⁹ current emergency response requirements under the National Response Framework (NRF)¹⁰, standardization of first responders under NIMS,¹¹ similarities in training and certification of military police forces¹² compared to civilian police, and similarities of enforcing state laws both on and off federal installations.¹³ The recommendation section will help to establish both benefits and caveats associated with the use of military police forces to conduct civilian law enforcement off of federal installations.¹⁴

This research is limited to Military Police Mutual Aid and will not cover other Federal Forces, such as the United States Coast Guard, who may be used to conduct civilian law enforcement. For purposes of this research, Department of Defense Civilian Police, including Department of the Army, Navy and Air Force Civilian Police, are also included as military police forces since they fall under the restrictions of the PCA unless otherwise exempted.¹⁵

History of the Posse Comitatus Act

The Posse Comitatus Act is an act of Congress written into the code of U.S. law, referred to as the U.S. Code. The Act can be found at the government publications website under Title 18, Part I, Chapter 67, Section 1385 (1878).

A reading of the act is quick and easy. Section 1385 says:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a Posse Comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.¹⁶

On its face, the Act looks to be directed at local Sheriff's and U.S. Marshal's who were the main violators of conscripting Army Soldiers and pressing them into service as

a posse.¹⁷ However, the congressional records of 1878, show that the language contained in the Knott Amendment to the Army Appropriations Bill, demonstrates the PCA was “Clearly enacted in response to military involvement in reconstruction south.”¹⁸

Congressional members from the Southern States were becoming politically powerful. They used that political power to reverse the influence of the federal government by continued military intervention in the south.¹⁹ In his book, Coakley asserts that the federal government was still involved in the south because of the problems with southern white supremacists and former confederates.²⁰ Young reports in his book evidence he found that support to enact the PCA was also related to Sheriff’s pulling military personnel away from their duty out west.²¹

County sheriffs and U.S. Marshalls were using their authority to draft and deputize soldiers in their counties to be part of posses. Serving in these posses took the Soldiers away from their military duties. The War Department (and to a lesser extent Congress) wasn’t happy that deployed soldiers in the south and out west were being drafted and pulled away from their duties.²²

These historical accounts provide a detailed record of the War Department’s actions, the U.S. Attorney General’s actions, and General Ulysses Grant’s actions during the timeframe in question. These primary and ancillary actors contributed to the climate that ultimately caused enough support to be garnered for the U.S. Congress to pass Section 1835 of the U.S. Code.²³

With the passage of the act came restrictions; both intended and unintended. A legal department spokesperson for the Department of Homeland Security, David Brinkerhoff, says that “In passing the act, the Congress voted to restrict the ability of

U.S. Marshals and local sheriffs to conscript military personnel into their posses”.²⁴ As a means to ending military control of the South, the PCA also restricted military commanders from volunteering to conduct civilian law enforcement without presidential approval.²⁵

In addition to the published historical accounts, there are a multitude of legal opinions and writings regarding the law. The U.S. Army employs several methods to opine on proper procedures and regulatory guidance. The chief method used is the U.S. Army Judge Advocate General (JAG) Corps, also known as Army Lawyers. To ensure military commanders are provided uniform legal advice by the JAG, the JAG Corps publishes several documents. One such document is the Domestic Operational Law Handbook published by the Center for Law and Military Operations.²⁶

One section in the JAG handbook covers the history, provisions, applicability and exceptions of The Posse Comitatus Act.²⁷ Of note is the historical reasons provided by the handbook, differ from the historical reasoning of Brinkerhoff.²⁸ While Brinkerhoff claims the Act was to reduce local sheriffs and U.S. Marshals use of military personnel located in their jurisdiction, the JAG handbook states the Hayes/Tilden election was contested because General Grant used federal troops at polling places in three southern states which possibly caused the electoral votes of those states to be given to Hayes.²⁹

Possibly because of the differences in opinion as to the historical reasons and legal applications of the PCA, Congress and the Executive Branch granted exceptions to the act over the years. General Currier’s U.S. Army War College strategic research thesis on the PCA being an impediment to transformation contains an appendix with a

lengthy table of exceptions to the PCA.³⁰ Four notable exceptions that pertain to the use of military police in cases of mutual aid are: non-active support to civilian law enforcement off of federal installations; military personnel conducting law enforcement against civilians on federal installations; military personnel providing designated personnel security off of federal installations; and National Guard personnel conducting law enforcement against civilians off of federal installations when activated under state orders.³¹

Currier also discusses the three tests used by the courts in determining appropriate use of PCA. The three tests determine whether military forces regulated, proscribed, or compelled civilian law enforcement actions (U.S. v. McArthur), whether military forces provided active or non-active support (U.S. v. Red Feather and U.S. v. Hartley), and whether the military forces constituted a pervasive amount of assistance or involvement (U.S. v. Jaramillo).³²

A second Department of Homeland Security legal department opinion, proffered by C.T. Trebilcock, discusses at length current “erosions” of the act and gives possible areas where the military can become more involved in supporting law enforcement, including civil disturbances and the war on drugs.³³ The opinion continues by stating that military police have jurisdiction over military members subject to the uniform code of military justice (UCMJ) whether on or off federal installations. Trebilcock concludes by surmising that the history of the law was not intended to prevent federal police forces from enforcing the law.³⁴

To clarify Trebilcock’s point, military police forces only have limited jurisdiction over military members off of federal installations. Notwithstanding criminal behavior

conducted on a federal installation which follows the person regardless of geographic location, jurisdiction over military members off the installation is limited to purely military offenses such as Absent without Leave (AWOL), missing movement, or failure to obey an order. For crimes conducted off of a federal installation and covered under federal, state or local statute, the civilian authorities retain jurisdiction unless granted to the military.³⁵

One area not covered in the legal opinions or exceptions to the ACT is the possible use of trained and certified military police conducting active Law Enforcement activities in support of civilian Law Enforcement officials off of Federal Installations. Without an exception for this, the PCA will continue to restrict the use of military police forces to aid civilian Law Enforcement. When the case for mutual aid arose, such as during the LA Riots and after Hurricane Katrina, Presidential authority for military police forces to deploy and conduct civilian law enforcement activities was used to great benefit.³⁶ However, short of a Presidential Order, the PCA prevents military police mutual aid support.

Mutual Aid

Mutual Aid is a concept over 2,000 years old and over 330 years old in America.³⁷ The concept involves neighboring jurisdictions sending support to assist other neighboring jurisdictions in putting out fires, rescuing people, and providing additional security.³⁸ This concept has such wide acclaim that even the National Response Framework, the document that outlines national activities in light of disasters or major terrorist attacks, calls for its use.³⁹

From a Law Enforcement perspective, mutual aid began as historical policing efforts of the Night Watch, Constables, Sheriffs and Posses.⁴⁰ Modern policing

adopted the concept of mutual aid as more departments became professionalized and similarly trained.⁴¹ In 2003, The Department of Justice and Department of Homeland Security codified the notion of mutual aid between police forces in Homeland Security Presidential Directive 5 – Management of Domestic Issues.⁴² Following on the heels of HSPD-5 was the establishment of the National Response Framework (NRF),⁴³ and the National Incident Management System (NIMS).⁴⁴ The NRF and NIMS were designed to better manage emergency response at the local through federal level with standardization of training, operating procedures, and preparedness goals.⁴⁵ Both of these landmark initiatives place mutual aid squarely at the forefront of response to crises.

In contrast to these two initiatives stands the PCA. The historical argument for creation of the act (Soldiers being conscripted into a posse) currently precludes federally constituted and certified law enforcement professionals, military police, from supporting local police departments in a crisis (without Presidential or SECDEF approval).⁴⁶ A Director of Emergency Services – formerly known as a Provost Marshal – cannot volunteer to respond to an adjacent local jurisdiction authorities' request for support to conduct active law enforcement operations. In other words, sending military police from Fort Rucker, Alabama to Samson, Alabama (under the authority of the County Sheriff)⁴⁷ would run afoul of the PCA despite the new federal desire to rely on mutual aid as a tenant of responding to disasters.

As mentioned in the introduction, the PCA Precludes MPs from Responding to mutual aid Requests, even if they are the closest law enforcement agency. This was borne out in another case near Fort Leonard Wood, Missouri. On July 4th, 2009, a

shooting occurred at a park adjacent to the military installation. Of particular note was the mutual aid call that went out. Police from five different jurisdictions responded to the shooting location, except for the closest one – the military police on Fort Leonard Wood.⁴⁸

Only two of the departments had concurrent jurisdiction, the county and state police agencies. Under the structure of mutual aid, responding departments fall under the authority of the Sheriff. This allows mutual aid to work when police, who would ordinarily have no authority in another jurisdiction, gain authority under the Sheriff.

The Fort Rucker, Alabama, violation of the PCA was similar to this incident. The director sent military police to a town outside of the jurisdiction of the federal reservation to which they were assigned. The town was Samson, Alabama and the orders to go were in response to a call for mutual aid. Samson, Alabama, is a small town and was unable to deal with a mass shooting that just occurred. The mass shooting caused eleven deaths (including the offender), covered a multitude of crime scenes, and rapidly depleted the local, county, and state police agencies ability to secure evidence and restore safety.⁴⁹

Suffice to say the Inspector General of the U.S. Army determined the actions of the MPs were active in nature and as such in violation of the Posse Comitatus Act.⁵⁰ The finding by the IG indicates a gap in availability of military law enforcement personnel (Army and Marine Military Police, Navy Master of Arms, and Air Force Security Police) to support local, county and state law enforcement authorities.

The JAG handbook previously mentioned, outlines the PCA and other elements of federal law relating to Defense Support for Civilian Authorities (DSCA).⁵¹ In this

publication is the U.S. Army's legal opinion on such matters as the Stafford Act, and its role in Defense Support to Civilian Agencies (DSCA). The Stafford Act was written in response to several state requests for federal assistance, including federal troops, in the wake of natural disasters and unmanageable natural or man-made incidents.⁵² The JAG handbook also outlines procedures for requesting federal assistance, including military personnel.

In addition to the NRF and NIMS, the Department of Defense published the *Strategy for Homeland Defense and Civil Support*,⁵³ and the National Homeland Security Council published the National Strategy for Homeland Defense.⁵⁴ These strategic documents set the stage for the "whole of government" approach to terrorism and natural disasters. While not binding, these documents are a baseline proclamation to inform all concerned elements of government and effected private enterprises of the intent should security operations become necessary.⁵⁵ The strategy in numerous sections discusses shared responsibilities of all levels of jurisdictions. It discusses the USA PATRIOT ACT, intelligence sharing, intelligence led policing and using all aspects of the U.S. Government (USG) to effect security and manage future incidents. There are continual references throughout about federal, state, local, and tribal assets and efforts and even mentions private enterprises and non-profits. It also discusses emergency management and responses and representative jurisdictional responsibilities. Overall it stresses that we must leverage all assets within U.S. Government actions in extremis circumstances.⁵⁶

A scholarly look at the framework of response capabilities includes Posner's assertions on the flexibility of the U.S. Constitution. He argues that the constitution is

not a “suicide pact that requires the exclusion of actions to provide security in the face of suspending constitutional rights...”⁵⁷ Brinkerhoff’s second essay on how the Posse Comitatus Act relates to Homeland Security in the wake of 9/11 also allows for the suspension of previously prohibited practices.⁵⁸ Louden remarks on the expanded role of Law Enforcement Officials to include service as the on-scene commander – a post traditionally held by a Fire Chief unless it was purely a crime scene.⁵⁹ He also argues those officials need to leverage the interdisciplinary community and mutual aid assets.⁶⁰ Currently, all manner of military support – fire trucks, helicopters, ambulances, and engineers – are available to assist local officials except for military police.

Military Police

It is important to make a distinction here. This position is not referring to all military personnel – it only refers to MPs who are already conducting active police operations – albeit on Federal Installations. Military Police are professionally trained, and in many cases certified, Law Enforcement officers on Federal Installations. Their ability to conduct mutual aid is not in question. At issue is the prohibition that off-post jurisdictions have in requesting MPs to respond during mutual aid situations in a Law Enforcement capacity. MPs can go to an incident to provide advice and information, but cannot conduct any operations related to security, active law enforcement operations, or controlling the actions of the civilian populace without specific authorization by the President or SECDEF.⁶¹ When a military policeman conducts duties on the Federal Installation, he is appointed by the Army to provide security, conduct active Law Enforcement operations, and control the actions of the military and civilian populace on Federal property. Responding off of a military installation in support of a local police official would be commensurate with their police duties and training. Notwithstanding

the PCA prohibition, military police have the capability to perform mutual aid duties in accordance with training and operational policies and procedures.

The training conducted by military police when conducting Law Enforcement duties on the installation mirrors that of civilian police officers. Training such as rights of the accused, determining probable cause, the use of force, interpersonal communications, elements of state and federal statutes, and rules of evidence are just some of the many similarities in training.⁶² It is a matter of Department of Defense policy that MPs enforce many of the state statutes on the installation for the state in which it is located.⁶³ To do that, MPs must be trained and certified.

The prohibitions of the PCA do not extend to extrajurisdictional areas. As such, military police are routinely deployed overseas and frequently tasked to provide training and supervision of indigenous police forces. Over the years, MPs have trained or partnered with civilian police forces in Germany, Japan, Viet Nam, Korea, Grenada, Panama, Iraq, Afghanistan, Kuwait, Saudi Arabia, Egypt, Israel, Lebanon, Taiwan, Philippines, the UK, France, Belgium, The Netherlands, Columbia, and Honduras just to name a few.⁶⁴

Military Police also provide Law Enforcement services on military installations overseas in friendly host countries, such as Germany, Belgium, and Korea. Status of Forces Agreements (SOFAs) prescribe the interaction between the military and civilian authorities off of the military installation, but ordinary procedure is for MPs to work with host nation Law Enforcement officers in the supervision of military personnel off-post. It is commonplace for MPs to provide mutual aid to host nation police.⁶⁵

Additionally, the U.S. Military relies heavily on MPs to conduct Customs Inspections. Upon return to the U.S. from deployments or overseas assignments,

Military Members and equipment often pass through a Military Customs Port of Departure. Military Police serve as agents of U.S. Customs and Border Police enforcing Federal Law. This type of mutual aid is not prohibited by the PCA.

Military Police do have some restrictions on enforcing laws on the civilian populace inside of military installations, but in general, they enforce the same state laws.⁶⁶ The major difference is that when a civilian person enters the federal installation, they waive many of their rights – including the protection of the PCA where Soldiers would otherwise be prohibited from controlling or detaining them.⁶⁷

When dealing with the civilian populace on a military installation, MPs are required to attend to the exact same professional, legal interaction with them as their civilian counterpart off-post. Reasonable suspicion, probable cause, interviewing, detention, search, seizure, and transfer to other competent authorities, all comes into consideration. MPs therefore are required to have policies, procedures and training in place to professionally and justly interact with the civilian populace.⁶⁸

Possibilities and Perils

The possibilities and perils research covers current standing exceptions to the PCA, faulty historic incidents of military support to civilian law enforcement, and potential possibilities for Military Police Mutual Aid. Included in the exceptions discussion is an annotation of exclusions and exceptions.

As of 2010, there were 26 exceptions to the PCA.⁶⁹ These exceptions range from the use of the Army to protect Yellowstone National Park, to the use of land and naval forces to serve warrants in civil rights cases (at the request of the Magistrate)⁷⁰. Other high profile exceptions contained under Homeland Security support, include deterring terrorism (1996 Olympics in Atlanta), interdicting drugs and smuggling

(1980s), and civil disturbance operations (LA riots).⁷¹ The Department of Defense currently allows DoD Police, moving between federal installations in the National Capitol Region (NCR), to assist local Law Enforcement if needed.⁷² DoD also allows federal forces, including MPs, to control civilians if the course of providing security for designated personnel.⁷³

Protecting the Homeland and providing assistance to the interagency community accounts for several of the exceptions to the act. In the case of nuclear material, members of the military can work for the Department of Justice irrespective of the mission to be performed - including having active role in Law Enforcement operations. Support to combat terrorism and defense against weapons of mass destruction, specifically Biological and Chemical weapons is also excluded. Finally, routine support to civilian agencies is permissible but must be passive, not active. Passive activities include providing intelligence and information, loaning equipment, fixing the equipment, train personnel to operate the equipment, and personnel service support (cooking, medics, and drivers).⁷⁴

Not all uses of federal military forces in support of civilian law enforcement were exemplary. High profile cases such as Wounded Knee, the Branch Dravidian Compound, and the Pullman Riots, gave cause for re-evaluation of allowing for exceptions to the PCA. Anytime Federal forces become involved, questions regarding Government primacy and Government nexus are raised.

Government primacy is the theory that if a government agency responds to or becomes involved in a domestic law enforcement operation, that it (the government) automatically assumes control.⁷⁵ This false assumption may unduly cause hesitation for

local authorities in requesting assistance, but also on the part of military leaders when providing support. Included in this theory from a litigation standpoint is the argument over Government nexus. When federal forces provide support, they operate under the jurisdiction of the local authority and mitigate the nexus.⁷⁶

Operating under the control of the local authorities is crucial. The National Guard Joint Task Force Commander for response to Hurricane Katrina, General Richie, stated his force deployed to Louisiana and worked under the control of the Governor and County Sheriffs.⁷⁷ His initial concerns about jurisdiction were alleviated when his task force was ordered to report to, and work for, the State and Local authorities. They provided him the authority and legal protection while he provided support.⁷⁸

When discussing mutual aid, General Richie did caution about habitually providing support to local authorities, lest they become too dependent on it. His concern stemmed from the State of Louisiana's inability to internally deal with the disaster because over 50% of the National Guard was deployed overseas. He indicated State and Local jurisdictions were not self-supporting enough and if in the future, other localities became reliant on Federal forces providing mutual aid, and those forces were not available, the municipalities would be unable to deal with a crisis.⁷⁹

Compliance requirements were established under the NRF and NIMS programs to meet several goals. NIMS protocols ensure that local disasters and incidents start and end at the local level, but that are supported from a host of authorities above and outside of the local jurisdiction.⁸⁰ Because it can be strenuous for local jurisdictions to meet the response and recovery mandates when an incident occurs, FEMA established various command systems, interoperability structures, and training venues to aid local

and state jurisdictions. This system of systems ensures authorities are provided tools to successfully manage their disasters, and not merely supplanted by federal authorities to do it for them.⁸¹ FEMA also provides non-emergent grants for mitigation efforts, training, and equipping. This effort at improving prevention, preparedness and readiness is supported by NIMS compliance requirements and enables local jurisdictions to respond to crises.

Military Police support for mutual aid is manageable under the NIMS and NRF guidelines. However, in evaluating the relevancy of the PCA, relating to cases of mutual aid by certified military police, the PCA comes up short. The possibility exists for military police to support local jurisdictions through the rubric of mutual aid if allowed by an exception to the PCA.

The Posse Comitatus Act is an outdated concept according to several authors including General Currier. In effect General Currier argues that while you can use a National Guard Soldier, who only knows how to drive a tank, to perform law enforcement duties, you can't use a military policeman from the local military base because they are a federal asset and not a state asset.⁸² Colonel Bolgiano writes that the military purpose doctrine allows federal forces to conduct law enforcement activities off of the federal installation provided there is a direct connection to the illegal activity and the security of the installation.⁸³ Elsea, in her Congressional Research Report, adds to this by saying that an activity solely for a military purpose – despite having incidental benefits to civilian government and/or civilian Law Enforcement – is permissible.⁸⁴

There are three basic statutory exclusions concerning the military and the PCA.⁸⁵ The U.S. Coast Guard is designated as a Law Enforcement organization and excluded from the PCA.⁸⁶ The Insurrection and Sedition Act allows for the President to use Federal Troops to enforce civil law.⁸⁷ The Law Enforcement Support Amendment allows the military to provide information and equipment.⁸⁸

DOD and Army Regulations play a large role in regulating the usage of MPs off of Federal Installations. The possibility of opening up an exception to the PCA for military police under the concept of mutual aid is in keeping with ability of DOD to regulate military forces. The benefits of allowing MPs to respond to off-post requests for mutual aid, even in cases of conducting active police operations, outweigh any historical concerns about local sheriff's drafting soldiers to be part of a posse. Military Police performing Law and Order duties off of federal installations is consistent with military readiness and duty performance.

One of the benefits of working mutual aid activities with civilian law enforcement agencies includes providing MPs experience with other departments' procedures and techniques. Partnering with local Law Enforcement professionals builds synergy and cohesion. This mutual understanding helps eliminate friction when responding to incidents of significant magnitude. In his Article, Troops Defending the Homeland, Banks posits that in the fight against terrorism and other threats to national security, the use of the military in domestic counter-terrorism is a wise course to pursue.⁸⁹

Recommendations

The spirit of the Posse Comitatus act has morphed from protecting Soldiers so they could perform military duties, to handcuffing military law enforcement personnel from being able to provide local law enforcement assistance in a time of emergency.

Military Police can be a great tool to enhance public safety and support local law enforcement, but that usage is not without concerns that must be mitigated. If Military Police are to serve as that additional tool, another exception to the PCA would be required to allow this aid to occur. Implementation of an exception must cover training, supervision, temporary nature, liability, jurisdiction and local military command approval process.

Training and certification requirements of military police forces must be uniform across the services. Variances between military forces and civilian departments must be identified and a strategy enacted at the local level to close those gaps. Local agencies requesting support must understand the limited ways support can be provided. Avenues for cooperation, such as joint training and observation of operations, can increase mutual understanding and foster improved relations. Scenario based joint training with local Law Enforcement is a best practice approach.

Supervision of MPs must be limited to MPs, not local authorities. A leadership hierarchy containing information on which leader at which level can make what decision is required. When responding to requests for support, tasks are provided by the local authorities, but guidance on the execution of those tasks is the obligation of the MPs in accord with established procedures.

Memorandums of Agreement are a valuable tool for establishing in advance what type, how much, and for how long, support can be provided in response to an emergency. Recognizing the temporary nature of mutual aid, agreements for relief must be included.

Assumed liability by the requesting agency must be stated in advance as a means to divest the support provided from the government nexus. When falling under the jurisdiction of local authorities, MPs must be given authority from the supported jurisdiction. Upon competent execution of the support, protection from liabilities associated with that support must also be provided by the local authorities.

Veto authority by the senior military commander or the senior MP is retained. Military missions that preclude the rendering of support take precedence to any prior agreements. Requests for support outside of the scope of capabilities must be reviewed carefully before rendering support. Senior leaders should have a working knowledge of the restrictions and allowances of support to be provided.

Requesting authorization from the President or SECDEF can be problematic at best. In most instances a situation is likely to be resolved before authorization would ever be given. To effect these recommendations for timely Mutual Aid support, a change in law is required. A mechanism is needed to request MPs be exempt from the provision of the PCA in cases of mutual aid.

“Things have changed a lot since 1878, and the Posse Comitatus Act is not only irrelevant but also downright dangerous to the proper and effective use of military forces for domestic duties.”⁹⁰

Endnotes

¹ Griffin, Larry. Army report: Fort Rucker MPs in Samson after shooting a violation. *The Dothan Eagle*, October, 2009. http://www2.dothaneagle.com/dea/news/local/article/army_report_fort_rucker_mps_in_samson_after_shooting_a_violation/101682_

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